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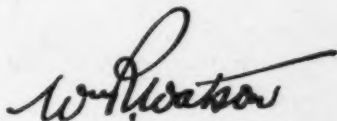
THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

*In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporations System and associated companies deal with and act for lawyers exclusively.*

The Supreme Court of Pennsylvania has affirmed a county court in refusing to take jurisdiction over the internal affairs of a Delaware company. (See page 134.)

In Ohio, a judgment by default has been set aside where obtained against an Ohio corporation through service upon its process agent by delivering the summons to a room clerk in a hotel in which the process agent resided. (See page 129.)

The Supreme Court of Arkansas has held an unlicensed foreign corporation to be doing business and subject to a statutory penalty, where it performed services in Arkansas for an Arkansas resident and agreed to perform similar services at any time within five years if the original work did not prove effective. (See page 129.)



President.

## ***Stock Transfers—nuisance factor or full-time job?***

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The delegation of this work to a responsible, experienced, and properly equipped Transfer Agent is just good, sound, business sense—for to such a Transfer Agent transfer of stock and the keeping of stock records is a full-time job . . . the smallest detail of which is important. Nothing is left over until tomorrow.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

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## **CORPORATION TRUST**

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Federal Administrative Procedure

## Status of Dominion Companies in the Provinces

It was outlined in a previous article<sup>1</sup> that, in the Canadian provinces, the requirements that a foreign corporation be "registered" or secure "a license," where each is applicable, correspond to the provisions in State laws that a corporation "qualify" or obtain "a certificate of authority" to do business.

There are limitations upon the extent to which such Provincial requirements may be applied to Dominion companies.

The highest court of the Dominion, the Privy Council, in 1921 held in *The Great West Saddlery Co., Ltd. v. The King*,<sup>2</sup> that Ontario, Manitoba and Saskatchewan could not, by legislation, prohibit a Dominion company from carrying on business without first obtaining a license to do so, the court indicating that such legislation was invalid (*ultra vires*), as encroaching upon the prerogatives of the Dominion Parliament. The companies involved were held not liable to penalties prescribed for having, without being licensed, carried on business and exercised their pow-

ers in these Provinces. As a result, Dominion companies have not since been regarded as required to be "licensed" before doing business in any of the Provinces.

A Dominion company may, however, be obliged to "register" in a Province. In *The Great West Saddlery* case, mentioned above, the Privy Council indicated registration would be legitimate if the law merely required a Dominion company, within a reasonable time after commencing to carry on business in a Province, to register its name and other particulars in the Provincial register and to pay fees not exceeding those payable by Provincial companies, and imposed upon it a daily penalty for not complying. This is the type of registration which is applied to Dominion companies in the Provinces today.<sup>3</sup>

A Dominion company entering a Province is subject to the general laws of the Province, including laws enacted respecting mortmain, i.e., those relating to the holding of real property by such a company.<sup>4</sup>

<sup>1</sup> The Corporation Journal, January, 1942, page 77.

<sup>2</sup> 58 D. L. R. 1.

<sup>3</sup> As a practical matter, Dominion companies today "register" in Alberta, British Columbia, Manitoba and Saskatchewan. In the remaining provinces, the comparable requirements applied to Dominion companies amount to less than "registration."

<sup>4</sup> *John Deere Plow Co. v. Wharton*, (1914) 18 D. L. R. 353.

## Domestic Corporations

### Delaware.

Amendment increasing authorized Class A shares, adopted by majority vote of majority of Class A stock, voted as a class, and majority of preferred and common stock, voted together, upheld. In *Hartford Accident & Indemnity Co. v. U. S. Dickey Clay Manufacturing Co.*, 21 A. 2d 178, (The Corporation Journal, October, 1941, page 6), the Court of Chancery, New Castle County, upheld the adoption of an amendment to the charter of a company increasing the number of its authorized Class A shares from 500,000 to 1,000,000. In addition to the Class A stock, the company had outstanding no par value common and no par value preferred stock, in both of which the voting power was normally lodged. The common stock was not to receive any dividends until the preferred stock had received \$1. a share for two consecutive years, and not until the Class A stock had been retired. The amendment was adopted by a majority vote of the Class A stock, voted as a class, and by a majority vote of the preferred and common stock, voted together. The court ruled that a majority vote of the common stock, voted as a separate class, was not required. Upon appeal, the Supreme Court of Delaware has affirmed the decree of the Chancellor. After observing that the power of amendment, as it affects the rights of shareholders, is broad, but it has limitations, the Supreme Court said: "But every decision in this state has upheld the general right of the corporation to affect the position of an existing class of stock by the creation of a class or classes having preferred rights or superior positions." "An increase of the number of shares of an existing superior class of shares is, of course, within the same principle. The shareholders of the appellee company agreed that classes of stock might be increased in amount, for that was the law and it was written by implication into the charter." The court regarded the method of the adoption of the amendment, so far as it involved the majority vote of the preferred and common, considered as one class for voting purposes, as proper, since the right of veto by class vote had never been conferred on the common shares. A decree dismissing the bill, which sought to enjoin the consummation of the amendment and to have it declared void, was affirmed. *Hartford Accident & Indemnity Company v. W. S. Dickey Clay Manufacturing Company*, Supreme Court of Delaware, January 20, 1942. CCH Court Decisions Requisition No. 274958. Stewart Lynch (Manning W. Heard of Hartford, Conn., and Daniel L. Herman and Collins J. Seitz, of counsel), for the appellant. William S. Potter (Wiager, Reeder and Barker of Kansas City, Mo., and Southerland, Berl, Potter & Leahy, of counsel), for the appellee.

### Illinois.

Voting trustees ruled to be without authority to elect directors or officers for any period beyond the expiration date of the voting trust

**agreement.** The Superior Court of Cook County had granted plaintiff, a voting trust certificate holder in defendant company, an interlocutory restraining order deterring defendants, as trustees under a voting trust agreement, from electing themselves or others as directors or officers of defendant corporation for any period of time beyond the date when the voting trust would expire. If such an election had occurred, the persons so elected would have continued in office for almost a year beyond the expiration date of the agreement. The Appellate Court of Illinois, First District, First Division, affirmed the order of the lower court, observing: "The three trustees who are officers and directors of the hotel are expressly required by the terms of the voting trust agreement to turn over the property to the persons entitled thereto. This would not be accomplished within the meaning of the trust agreement were the directors and officers of the hotel authorized to control the property for a period of about eleven months after it was delivered to the true owners. Where property is placed in the hands of trustees for a specified period courts are careful not to permit an extension of control of the property by the trustees beyond the period mentioned." *Friedberg v. Schultz et al.*, 38 N. E. 2d 182. Jones, Mulroy & Staub (Don Kenneth Jones and Ernest F. Staub, of counsel), of Chicago, for appellants. Hirsch E. Soble of Chicago, for appellee.

#### Massachusetts.

**Loaning of money on a note by a Massachusetts corporation held ultra vires.** Plaintiff sued as trustee in bankruptcy to recover \$5,000 which his Massachusetts corporation had loaned to the three defendants as executors of the estate of a resident of New Hampshire, the money having been used to pay bills of the estate. Suit was brought against the defendants as individuals. A District Court judgment in favor of the defendants was affirmed by the United States Circuit Court of Appeals, First Circuit, upon the ground that the loaning of money was ultra vires the corporation since, as a Massachusetts corporation, it had no power under its charter to make loans of money and, as the court said, "it has long been the rule in Massachusetts that an ultra vires contract is void, no action thereon being maintainable." *Herbert v. Sullivan et al.*, 123 F. 2d 477. James A. Herbert of Boston (J. Morton Rosenblum of Manchester, N. H., on the brief), for appellant. Frank B. Clancy (Raymond C. Leahy, on the brief), of Nashua, N. H., for appellees. (*Appeal filed in the Supreme Court of the United States, December 31, 1941; Docket No. 828. Certiorari denied, February 9, 1942.*)

#### Nevada.

**Relator claiming to be stockholder and secretary of respondent corporation, ruled entitled to inspection of by-laws and minutes to assist him in establishing whether inspection of other records should be permitted by the court.** In an action in which the relator, as a stock-



holder and secretary, sought to obtain an alternative writ of mandamus providing for either the delivery to him of the seal, books, records, by-laws and documents of respondent company or that he be placed in a position to inspect and make extracts from such records, the relator filed a motion for an order requiring respondents to permit him to inspect and make copies of most of such records and certain others under Sec. 8963, N. C. L., 1929. The Nevada Supreme Court ruled that relator was entitled to an order permitting inspection to a limited extent at this point in the proceedings, observing: "Whether relator was or is a stockholder is a question to be tried and determined in the main proceeding; so also is the question whether he was or is the secretary of the corporation, and if so, whether he is entitled to have the custody and control of its seal, books, records and papers." "We think relator is entitled to an order of inspection and copy in connection with his prayer that the seal, books, records and papers of the corporation be delivered to him as its secretary; but the order should be limited to by-laws and minutes. As the secretary, under our statute (Sec. 1635 N. C. L., 1929), is chosen by the board of directors, the minutes of that board may be expected to show who the secretary is. The fact that there might be something in some of the other books, papers, records and documents of the corporation to indicate who the secretary is, is not, in our opinion, sufficient basis for a sweeping pre-trial inspection of all of them. Our statute does not give custody or control of the corporation's books, papers and records to the secretary. In the absence of such statute, and the corporation itself being the owner and entitled to the possession of its books, papers and records, the stockholders or directors may prescribe the person who shall have custody of them. 18 C. J. S. 611. To ascertain, therefore, whether the secretary of a Nevada corporation has the right to the custody and control of its books, papers and records, it is the by-laws, and the directors' and stockholders' minutes which are to be inspected." *State of Nevada v. Garaventa Land & Livestock Company*, Nevada Supreme Court, November 6, 1941. Commerce Clearing House Court Decisions Requisition No. 268959. H. R. Cooke and John Davidson of Reno, for relator. Springmeyer and Thompson of Reno, for respondents.

### New York.

**By-laws requiring action by sixty per cent of capital stock construed.** The by-laws of a corporation provided: "At all meetings of stockholders, except when it is otherwise provided by law, it shall be necessary that stockholders representing in person or by proxy sixty (60) per cent of the capital stock shall be present to constitute a quorum." Another by-law provided: "At all meetings of the stockholders, all questions, the manner of deciding which is not specifically regulated by statute, shall be determined by a sixty (60) per cent vote of the stockholders present in person or by proxy." The question concerned the election of directors by the unanimous



vote of the holders of 26 of 50 outstanding shares. The New York Supreme Court, Special Term, after reference to sections of the General Corporation Law and the Stock Corporation Law, particularly Sections 22 and 23 of the General Corporation Law, found that the special meeting had been properly called and concluded that, since Sec. 23 of the General Corporation Law, outlining the mode of conducting special election of directors provides that "at such meeting the members attending shall constitute a quorum," the election was validly conducted under the by-laws and the statutes. *Matter of Warns*, New York Supreme Court, Special Term, Queens County, November 10, 1941. Commerce Clearing House Court Decisions Requisition No. 269789.

#### Ohio.

Judgment set aside, where obtained against corporation through service made upon its process agent by delivering summons to a room clerk in a hotel in which the agent resided. Defendant Ohio corporation filed a petition to vacate a judgment by default obtained against it. The sheriff, when serving the summons, intended for the process agent designated by the corporation, had left it with the room clerk of the hotel in which the process agent was a permanent resident. The Ohio Court of Appeals affirmed the judgment of the Court of Common Pleas in vacating the judgment on the ground that such service did not constitute service of process upon the defendant corporation as provided by law. The court noted that the hotel clerk was "in no way deputized or authorized by law to serve others with legal process." It ruled that the service did not constitute "residence service" and was not a compliance with that portion of Section 8623-129 which provides for service upon the process agent and permits "leaving a copy thereof at his address as the same appears upon the records in the office of the Secretary of State." The court said: "Nor does a clerk in a hotel bear such relation to a permanent guest who makes his home in such hotel as is in law to be considered a member of the guest's household so that delivery of a summons to such clerk will constitute service upon such guest on the theory that the summons was delivered to a member of such person's family or household within or in close proximity of his residence." *Ruckert v. The Matil Realty Company*, Ohio Court of Appeals, November 3, 1941. Commerce Clearing House Court Decisions Requisition No. 271378. Irwin P. Pohl and Jas. T. Cassidy, for the plaintiff. Sol Edgert, for the defendant.

## Foreign Corporations

#### Arkansas.

Corporation held doing business and subject to statutory penalty where it performed services in Arkansas for Arkansas resident and guaranteed to perform similar services at any time within five years

if original work was not effective. The Supreme Court of Arkansas has affirmed a judgment of \$1,000 rendered against appellant foreign corporation because of doing business in the state without qualifying under the statutes. Service was made upon the Auditor of State in April, 1941. The Supreme Court found "ample testimony in the record of a substantial nature to sustain the court's finding that appellant was doing business in the state" in the evidence that the corporation had entered into a contract in 1939 with a resident of Arkansas to perform certain services in exterminating termites in the resident's building and in its guarantee to treat the building again at any time within five years if termites reappeared there. "Appellant finally contends," said the court, "that it was not doing business in Arkansas on April 9, 1941, when summons was issued. We think this contention is untenable for the reason that the guarantee provided in the contract, supra, continues over a period of five years from April 5, 1939." *Vaccinol Products Corporation v. State for Use and Benefit of Phillips County*,\* 156 S. W. 2d 250. Commerce Clearing House Court Decisions Requisition No. 271721. Dinning & Dinning of Helena, for appellant. John L. Anderson and Douglas S. Heslep of Helena, for appellee.

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\*The full text of this opinion is printed in **The Corporation Tax Service**, Arkansas, page 545.

### Montana.

Foreign corporation, which ceased to do business in state, required to file return and pay license tax for the portion of the last year during which it carried on business in the state. Defendant Delaware corporation, which had obtained authority to do business in Montana in 1934, ceased to do business there on October 6, 1937 and on December 6, 1937 filed with the Secretary of State of Montana documents evidencing that its corporate existence had been voluntarily terminated in Delaware. The State Board of Equalization of Montana demanded that the defendant make return of its net income for the fiscal year 1937. Defendant complied with the demand under protest but refused to pay the license tax levied by the board upon the return. This action followed and a recovery was had against the corporation for the amount of the tax as levied, with interest, penalty and costs in the lower court. Upon appeal, the judgment was affirmed by the Montana Supreme Court, which found authority for the tax levied in section 2303.3 which contained the following provision: "Every corporation which shall be dissolved or cease to do business in this state during any tax paying year, shall make its return and pay the tax due, for such periods as it transacted business, on or before such dissolution or cessation of business." The court observed: "Section 2303.3 does not impose any additional tax, but in cases wherein a corporation ceases to do business in the state the section merely becomes operative to bring to maturity the obligation to pay the tax for such part of the last fiscal year that the corporation carried on business in

the state without deferring the date of return or date of payment which applies to those continuing in business." *State v. Maguire Construction Co.*,\* Montana Supreme Court, December 4, 1941. Commerce Clearing House Court Decisions Requisition No. 270988. R. F. Gaines of Butte, for appellant. I. W. Choate of Helena, for respondent. J. M. Stotesbury of Bozeman, amicus curiae.

\*The full text of this opinion is printed in *The Corporation Tax Service*, Montana, page 1585.

### Nebraska.

Foreign corporation, never licensed in Nebraska, which had ceased doing business there, held subject to suit by process served upon the auditor of state in a cause of action arising out of the business done in the state. Defendant Delaware company, not licensed in Nebraska, had its principal place of business in Ohio. From its factory there it had sold merchandise to one Sternberg, who operated three retail stores in Omaha, Nebraska. Defendant took possession of these stores in liquidation of Sternberg's indebtedness to it, operated them for a time and then disposed of them to the plaintiffs. Service of process in an action, involving the contract by which the stores were transferred to plaintiffs, was made upon defendant by serving the auditor of state under section 24-1201, Comp. St. 1929, which required a foreign corporation obtaining authority to do business in the state to appoint an agent or agents in the state and indicated service might also be made upon the auditor of state. This action was begun more than two years after the defendant had ceased doing business in the state. The Supreme Court of Nebraska upheld the judgment of the lower court in overruling the defendant's special appearance objecting to the jurisdiction of the court over the defendant. *Yoder et al. v. Nu-Enamel Corporation*,\* 300 N. W. 840. Ziegler, Dunn & Becker and D. L. Manoli of Omaha, for appellant. Sterling F. Mutz of Lincoln, for appellees.

\*The full text of this opinion is printed in *The Corporation Tax Service*, Nebraska, page 503.

### North Carolina.

Process set aside where made upon director of foreign corporation while in state servicing machine sold in interstate commerce more than a year before service of process was effected. Service of summons upon defendant unlicensed foreign corporation was made by serving a director who entered the state to service a machine sold by defendant to plaintiff. The machine had been shipped in interstate commerce, was installed by the defendant and had been kept in repair for the twelve-month period for which it had been guaranteed. The director's visit occurred at the request of the plaintiff after this period had expired. The Supreme Court of North Carolina affirmed the lower court in setting the service aside, emphasizing that "soliciting

## Defense contracts — — and statutory requirements

Due to our greatly accelerated war program many contractors are bidding on jobs in states other than the one in which they are incorporated. The majority of these contractors are moving their corporate homes for the first time. Because of this they frequently overlook statutory requirements . . .

. . . statutory requirements relating to foreign corporations doing business . . . providing in 16 states that a contract entered into by such a corporation is either void or unenforceable . . . indicating in 17 states, when a bid has been accepted, the qualification of such a corporation is necessary for the contract to be enforced in the courts of the state . . . in a third group of 7 states, after a bid submitted by an unlicensed foreign corporation is accepted, the corporation may sue upon the contract unless it first qualifies and pays a fee (commonly \$250).

From this general summation the importance of complying with statutory requirements may be readily seen.

Whenever any of your clients are bidding on a job in a state other than their own, and you wish to study the statutory requirements of that state, write or 'phone our nearest office. Based upon during a half-a-century's experience in working with contractors, the incorporation, qualification and maintenance of corporations can be put at your disposal.

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orders to be approved at the home office for merchandise to be shipped in interstate commerce is not doing business within the state." It noted also that defendant's obligations under the contract had expired and said that "the visit of its director to the state thereafter at the request of the plaintiff to service the machine constitutes an 'isolated act' or an act of 'trivial business' which was insufficient to bring the corporation within the state for the purpose of service of summons." *Schoenith, Inc. v. Adrian X-Ray Mfg. Co. et al.*,\* 17 S. E. 2d 350 Nathaniel G. Sims and Frank H. Kennedy of Charlotte, for appellant. Gover & Covington and Hugh L. Lobdell of Charlotte, for appellee.

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\* The full text of this opinion is printed in *The Corporation Tax Service*, North Carolina, page 158.

### Pennsylvania.

Court refuses to take jurisdiction over the internal affairs of a Delaware Company. The Supreme Court of Pennsylvania recently affirmed the Court of Common Pleas, Allegheny County, in dismissing, for want of jurisdiction, a suit by a stockholder of a Delaware corporation, as a stockholder, against the corporation and others, seeking the cancellation of a contract entered into by the corporation and a director thereof, and for other relief, including accounting in connection with certain transactions by the director. The court referred to prior decisions establishing the rule that the courts of Pennsylvania decline to take jurisdiction over the management of the internal affairs of a foreign corporation. *Hopkins v. Great Western Fuse Co. et al.*, 22 A. 2d 717. Elverton Hazlett Wicks of Pittsburgh, for appellant. Elder W. Marshall; Reed, Smith, Shaw & McClay; H. P. Eberharter, and Joseph D. Ripp, of Pittsburgh, for appellees. Commerce Clearing House Court Decisions Requisition No. 270032.

## Taxation

### Federal.

Receipt of stock dividend in preferred stock, declared by corporation having only common stock outstanding, by person owning all such common stock, held taxable as income. The petitioner, the owner of all the common stock of a corporation which had only common stock outstanding, received a stock dividend of 50 shares (par \$100 per share) of non-voting cumulative 7 per cent preferred stock declared out of surplus accumulated subsequent to February 28, 1913. The preferred stock had not been sold by the petitioner or redeemed by the corporation. The question was whether such stock dividend was taxable income to the sole stockholder upon receipt thereof in 1936. The Board of Tax Appeals ruled that this stock dividend was taxable income. Upon appeal, the United States Circuit Court has affirmed the Board. It distinguished between the *Eisner v. Macomber* (252 U. S. 189) case, holding not taxable the receipt of

a dividend payable in common stock to holders of common stock and the *Koshland v. Helvering* (298 U. S. 441) case, holding taxable the receipt of a dividend of common stock to preferred stockholders because the stock dividend changed the stockholders' proportionate interests in the net corporate assets. "Here, however," observed the court, "there was only one class of stock outstanding and but a single stockholder, who after, as before, the dividend owned the entire beneficial interest in the net assets of the corporation. Nevertheless, the rearrangement of corporate capitalization so that the petitioner held preferred as well as common stock did change the character of his corporate ownership. The preferred stock had the prior right to dividends and a preference on liquidation of the corporation, and these rights could be disposed of without affecting the voting control residing in the common stock. The petitioner received property rights of actual and exchangeable value and representing an interest different from that which his common shares represented." The court concluded: "In our opinion the case at bar is governed by the *Koshland* principle rather than by that enunciated in *Eisner v. Macomber*. It must be conceded, however, that the question is not free from doubt. Certain commentators have expressed the opposite view (Mertens, Law of Fed. Income Taxation 1939, cum. supp., p. 295 et seq.; C. C. H. Standard Fed. Tax Service 1941, vol. 2, p. 3096; compare also *Sprouse v. Commissioner*, 122 F. 2d, 973, C. C. A., 9)." *Strassburger v. Commissioner of Internal Revenue*,\* United States Circuit Court of Appeals, Second Circuit, December 22, 1941. Commerce Clearing House Court Decisions Requisition No. 272195; 124 F. 2d 315. Leo Brady, attorney for petitioner. Samuel O. Clark, Jr., Asst. Attorney-General, (J. Louis Monarch and Morton K. Rothchild, Special Assts. to the Attorney-General), for respondent.

\* The full text of this opinion is printed in the CCH Standard Federal Tax Service—1942—¶ 9173.

#### Tennessee.

Assignee of corporation engaged in general contracting business without being licensed ruled unable to maintain suit on cause of action arising out of such business, even though licensed before suit was begun. A Tennessee corporation was engaged in the general contracting business, without being licensed as a contractor, during the period covered by the transaction involved in this suit. It transferred to plaintiff a note representing a balance due on a contract. The Tennessee Court of Appeals affirmed a judgment dismissing the suit. It noted that the transferor was regularly engaged in the business of a general contractor at the time this particular contract was entered into, that it had not procured a license and paid the privilege tax imposed upon such a business and that Sec. 7182.25 of the Code declares it unlawful for any person to engage in or offer to engage in general contracting without being licensed. Regarding this as sufficient to justify the dismissal of the suit, the court indicated that an



attempt which was made to procure a license after the work was done was ineffective, observing: "It has been definitely settled by the state Supreme Court that the payment of a privilege tax after the privilege has been exercised but before suit is brought is too late." *H. L. Dulin & Company v. Watts et al.*,\* Tennessee Court of Appeals, December 6, 1941. Commerce Clearing House Court Decisions Requisition No. 271209. Testerman, Ambrose & Badgett of Knoxville, for plaintiff in error. Joel H. Anderson of Knoxville, for defendants in error.

\* Pertinent portions of this opinion are printed in **The Corporation Tax Service**, Tennessee, page 3922.

## Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.\*

CALIFORNIA. Docket No. 283. *Butler Brothers v. McColgan, Franchise Tax Commissioner*, 111 P. 2d 334. (The Corporation Journal, November, 1941, page 38.) California Bank and Corporation Franchise Tax Act—allocation of income. Appeal filed, July 19, 1941. Probable jurisdiction noted, October 13, 1941. Argued, February 12, 1942.

MASSACHUSETTS. Docket No. 828. *Herbert, Trustee in Bankruptcy of the Commercial Brewing Company v. Sullivan et al.*, 123 F. 2d 477. (The Corporation Journal, March, 1942, page 127.) Power of Massachusetts business corporation to make loans of money—liability on promissory note executed by individuals as executors, using proceeds to pay expenses of administering estate. Appeal filed, December 31, 1941. Certiorari denied, February 9, 1942.

\* Data compiled from CCH U. S. Supreme Court Service, 1941-1942.

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## Regulations and Rulings

**CALIFORNIA**—The limitation of time prescribed for the filing of refund claims under the Franchise Tax Act, the Corporation Income Tax Act and the Personal Income Tax Act, namely, "four years from the last day prescribed for filing the return," refers, in cases where an extension of time has been granted, to the last day of the extended period. (Opinion of Attorney General to the Franchise Tax Commissioner, California Corporation Tax (CT) Service, ¶ 8-924.)

**FLORIDA**—The Comptroller has issued rules and regulations under the chain store and inventory tax relating to the liability of specific businesses and materials. (Florida CT, ¶ 48-800 et seq.)

**ILLINOIS**—The Governor, State Auditor and State Treasurer met recently, in accordance with their annual statutory duty, and decided that there will be no state property tax for 1941. There has been no state property tax levy since 1932.

**INDIANA**—An Information Bulletin issued by the Gross Income Tax Division notes that the proper procedure for contesting the constitutionality of the gross income tax act is to pay the tax and then sue for a refund. (Indiana CT, ¶ 15-053.)

**KENTUCKY**—Foreign corporations whose sole activity in the state consists of owning property are "doing business" within the meaning of the Kentucky Income Tax Law and are subject to income tax upon any income arising from such property. (Opinion of Attorney General of Kentucky to Commissioner of Revenue, Kentucky CT, ¶ 14-503.)

**MARYLAND**—Deeds conveying property to the Defense Plant Corporation are exempt from the documentary recordation tax. (Opinion of the Attorney General of Maryland to the Clerk of the Superior Court, Baltimore, Maryland, CT, ¶ 48-525.)

**NEW YORK**—Counsel for the Department of Taxation and Finance has expressed the view that in cancelling New York stock transfer stamps, if the necessary letters and figures are placed on a stamp by means of a perforating machine, there is a compliance with Sec. 273, Tax Law. (New York CT, ¶ 200-541.)

**SOUTH DAKOTA**—A rule of the Division of Taxation indicates that any store or mercantile establishment operating a wholesale business in the state is exempt from the chain store tax if 90% of total sales in the state are wholesale, and that any store or mercantile establishment operating a wholesale business in the state is subject to the tax of 10% or more if sales in the state are retail sales. (South Dakota CT, ¶ 55-900.)

**WISCONSIN**—Inasmuch as Rule 104, relating to "Information Returns, Forms 9 and 9X, for Corporations," conflicts with the forms themselves as to payments of salaries, wages, fees and other compensation required to be reported by corporations for the calendar year 1941, the Wisconsin Department of Taxation has declared that the payments to be reported are those shown in Forms 9 and 9X, and not those indicated in Rule 104, wherever the rule and the forms do not agree. (Wisconsin CT Report No. 168.)

## Some Important Matters for March and April

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

**ALABAMA**—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign corporations.

**ARIZONA**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign corporations engaged in mining of any kind.

**CALIFORNIA**—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

**COLORADO**—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

**CONNECTICUT**—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

**DELAWARE**—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations making certain payments of dividends, interest or other income to citizens or residents of Delaware during 1941.

Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

**DISTRICT OF COLUMBIA**—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

**DOMINION OF CANADA**—Income Tax and Excess Profits Tax Return due on or before April 30.—Domestic and Foreign Corporations.

**GEORGIA**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Intangible Property Tax Return due on or before March 15.—Domestic and Foreign Corporations.

- IDAHO**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- INDIANA**—Quarterly Gross Income Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.
- IOWA**—Income Tax Return and Returns of Information at the source due on or before March 31.—Domestic and Foreign Corporations.  
Return of Taxes withheld at the source due on or before March 31.—Domestic and Foreign Corporations.  
Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.
- KANSAS**—Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.  
Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.
- KENTUCKY**—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.  
Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.
- MARYLAND**—Annual Report and Franchise Tax Report and Franchise Tax due on or before April 15.—Domestic Corporations.  
Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.  
Annual Report and Filing Fee due on or before April 15.—Foreign Corporations.
- MASSACHUSETTS**—Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.
- MICHIGAN**—Intangible Personal Property Tax Return due on or before April 1.—Domestic and Foreign Corporations.
- MINNESOTA**—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.  
Annual Report due between January 1 and April 1.—Foreign Corporations.
- MISSISSIPPI**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.
- MISSOURI**—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- MONTANA**—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.  
Annual Statement due within two months from April 1.—Foreign Corporations.
- NEBRASKA**—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.
- NEVADA**—Annual Statement of Business due not later than month of March.—Foreign Corporations.
- NEW HAMPSHIRE**—Annual Return due on or before April 1.—Domestic and Foreign Corporations.  
Franchise Tax due on or before April 1.—Domestic Corporations.

**NEW MEXICO**—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

**NEW YORK**—Annual Franchise (Income) Tax Return (Form 3 IT—Article 9A, Tax Law), due on or before May 15, together with one-half of tax.—Domestic and Foreign Business Corporations.

**NORTH CAROLINA**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Intangible Property Tax Return due on or before March 15.—Domestic and Foreign Corporations.

**NORTH DAKOTA**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

**OHIO**—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

**OKLAHOMA**—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

**OREGON**—Excise (Income) Tax Return due on or before April 1.—Domestic and Foreign Corporations.

**PENNSYLVANIA**—Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before March 15.—Domestic Corporations.

Franchise Tax Report and Tax and Corporate Loans Tax Report and Tax due on or before March 15.—Foreign Corporations.

Bonus Tax Report due on or before March 15.—Domestic Corporations.

Bonus Tax Report due on or before March 15.—Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

**RHODE ISLAND**—Semi-Annual Report to Director of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

**SOUTH CAROLINA**—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

- SOUTH DAKOTA**—Income Tax Return and Returns of Information at the Source due on or before March 31.—Domestic and Foreign Corporations.
- TEXAS**—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.  
Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.
- UNITED STATES**—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.
- UTAH**—Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- VERMONT**—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.  
Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.
- VIRGINIA**—Income Tax Return and Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.
- WEST VIRGINIA**—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.  
Annual License Tax Report due in April.—Foreign Corporations.  
Quarterly Gross Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.
- WISCONSIN**—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.  
Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.



# The Corporation Trust Company's

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